



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 29, 2020

CASE NUMBER: 2019OPA-0769

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	7.010 - Submitting Evidence 3. Employees Follow Department Guidelines for Evidence Packaging and Submission	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	7.010 - Submitting Evidence 3. Employees Follow Department Guidelines for Evidence Packaging and Submission	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee failed to correctly submit narcotics evidence, was rude when asked to correct the errors, and improperly disposed of the evidence.

SUMMARY OF INVESTIGATION:

The Complainant, who is an evidence warehouse at the SPD evidence warehouse and is responsible for inventorying and categorizing evidence submitted by SPD officers, was performing an inventory search of a bag submitted for safekeeping by Named Employee #1 (NE#1). While performing the inventory search, the Complainant discovered a black leather purse inside the bag. Inside the purse were items that she believed to be narcotics paraphernalia. Among the items were hollowed-out pen barrels, baggies with white and black, tar-like residue, a scale, and scissors. The Complainant set the items and backpack aside at the Evidence Unit's "trouble desk," and her co-worker emailed NE#1 requesting that he return to the Evidence Unit to correct errors with his submission of the bag. According to the Complainant, the narcotics paraphernalia should have been packaged in a separate box as paraphernalia and submitted as evidence, rather than kept in safekeeping for the owner of the bag to pick up.

The Complainant stated that her co-worker sent NE#1 messages over the Mobile Data Terminal (MDT) and that he was argumentative in reply. The Complainant stated that NE#1 came to the Evidence Unit on October 14, 2019, and that they spoke concerning the evidence. According to the Complainant, NE#1's tone of voice was "escalated" during their conversation. The Complainant stated that she told him the paraphernalia would need to be placed in a sealed box and the plastic bags would have to go in a narcotics envelope as they were suspected to contain trace narcotics. She stated that NE#1 refused and said that there would be no criminal charges filed. He allegedly stated that he would



photograph the items and then dispose of them. She said that he then took the purse and left the evidence unit. The Complainant stated that NE#1 never checked out the items or returned them as is standard Evidence Unit procedure. Ultimately, all the items NE#1 removed from Evidence were disposed of.

NE#1 completed an updated incident report related to his review of the items. In it, he stated that “THERE WAS NO NARCOTICS PRESENT IN THE SUSPECTS PROPERTY AT THAT TIME OR AS LATER ENTERED IN THE EVIDENCE UNITS NOTES” (emphasis in original). He acknowledged delivering the bag and items to Safekeeping and stated that there was no “measurable” narcotics residue in any of the items, nor did he believe them to constitute “paraphernalia.” Security video in the Evidence Unit depicted NE#1 arriving and conversing with an individual (presumably the Complainant) in the Evidence Unit. It showed NE#1 leaving the Evidence Unit building holding the purse containing the items. NE#1 then returned to the West Precinct and spoke with his sergeant, Named Employee #2 (NE#2). He reviewed the items and recorded his review on BWV. The BWV recording showed the pen barrels, plastic bags with visible discoloration, scissors, and a digital scale. The purse was also visible. NE#1 stated on BWV that he would be disposing of all the items. Notably, during his narration on BWV, NE#1 made a number of comments that could plausibly be interpreted as expressing his frustration with having to repackage and/or dispose of the items, including a statement that he would have to “do more paperwork.” NE#1 was not visibly escalated and did not use profanity.

As part of this investigation, OPA interviewed NE#1. He said he did not receive an MDT message from the Evidence Unit and was, instead, emailed by an Evidence Unit employee. He called the Evidence Unit to discuss the issue and stated that the phone call was normal and nonconfrontational. He did not recall becoming escalated or using profanity during the call. Likewise, he did not recall becoming escalated when he returned to the Evidence Unit. He said he spoke to a female employee but could not remember who. During his interview, NE#1 stated that none of the items in the bag as he originally submitted it constituted “evidence” for charging purposes and said that he believed the items should be retained in safekeeping as personal property. NE#1 stated that he disposed of the items in spite of this because he believed that the Evidence Unit would have done the same anyway. NE#1 stated that the Complainant never directly asked him to sign out the evidence or to package it as narcotics evidence. He also stated that he screened his handling of the incident with NE#2.

In a follow-up interview with OPA, the Complainant stated that she did ask NE#1 to package the narcotics evidence. She recalled that NE#1 told her that he did not believe the case would be prosecuted and that consequently, he did not feel the need to process the items. She stated that Evidence Unit policies dictated that NE#1 could not have submitted the items in the manner he did.

OPA interviewed NE#2. NE#2 stated that he recalled NE#1 screening the incident with him. He said that he recalled seeing clear plastic bags with “what might have been [narcotics] residue” and “smeared” black tar heroin on the scale. He said that since the arrest was not for a narcotics violation and there was not going to be a drug charge, he felt that the paraphernalia could be destroyed. NE#2 noted his belief that the Evidence Unit would have destroyed the paraphernalia on its own regardless. NE#2 also stated that there were health and safety concerns due to the potential presence of fentanyl. For all of these reasons, NE#2 approved of NE#1 disposing of the paraphernalia. He did not recall seeing the purse or the scissors and did not recall NE#1 specifying which items he would dispose of. NE#2 stated that he likely would not have approved disposing of the purse.

In a follow-up interview, NE#1 stated that the Evidence Unit informed him that they would not be able to hold the items in safekeeping or return them to the suspect until he “took possession” of the items. When he disputed that the property contained narcotics and told the Complainant that he would dispose of the items, NE#1 recalled that the



Complainant told him to “do what he need[ed] to do” and document his actions in a follow-up report. He stated that he took this as implicit license to dispose of the items. With respect to his interaction with NE#2, NE#1 explained that he primarily discussed his concerns with fentanyl exposure and that NE#2 approved of him disposing of the evidence to avoid exposure.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

OPA determined that that totality of the evidence does not support a finding that NE#1 violated the professionalism policy. Though the Complainant alleged that NE#1 was rude in email and/or MDT correspondence, OPA was unable to identify any MDT or email messages sent by NE#1 to the Complainant or her colleague. No audio existed of the conversation between NE#1 and the Complainant; however, all parties agreed that NE#1 did not use profanity or direct any insults at the Complainant. Moreover, while the Complainant asserted that NE#1 made statements that she perceived to be rude and that his tone of voice was “escalated,” this would not, in and of itself, establish a violation of the Department’s professionalism policy. Lastly, NE#1’s later narration on BWV could plausibly be interpreted to reflect his frustration with a task that he saw as duplicative or unnecessary; however, this also does not establish unprofessionalism.

Ultimately, there is insufficient evidence to establish that NE#1’s conduct, if even perceived to be rude or escalated by the Complainant, rose to the level of a violation of policy. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

7.010 - Submitting Evidence 3. Employees Follow Department Guidelines for Evidence Packaging and Submission

SPD Policy 7.010-POL-3 requires employees to “package and submit evidence directed by the SPD Evidence Packaging/Submission Guide.” (SPD Policy 7.010-POL-3). The Evidence Packaging/Submission Guide states that narcotics evidence shall be submitted in a sealed narcotics envelope and placed in the Narcotics Drop Box. (SPD Evidence Packaging/Submission Guide at 8; 10.) In addition, SPD Policy 7.010-POL-1 and 11.050-POL-1 require employees to safeguard evidence and detainee property, respectively.

It is undisputed that NE#1 failed to submit any of the evidence in a sealed narcotics envelope or place it in the Narcotics Drop Box. As a result, to the extent that any of the items constituted narcotics evidence, NE#1 violated this policy. Review of BWV showed that several of the bags contained visible discoloration and residue consistent with the presence of narcotics, and NE#1 himself told his sergeant that the items probably contained fentanyl (a narcotic). Additionally, the pen barrels and scale were self-evidently paraphernalia and should have been packaged as such.



Of more concern to OPA was NE#1's disposal of items of personal property. While much of the contents of the purse were narcotics evidence or paraphernalia, the purse itself was property that the owner had a right to possess. While OPA understands that individuals do not always claim property from safekeeping, that decision is theirs and not SPD's. NE#1 recognized this in his interview and did not articulate a reason for the purse's disposal that would have justified acting contrary to the plain language of SPD policy.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #1

7.010 - Submitting Evidence 3. Employees Follow Department Guidelines for Evidence Packaging and Submission

With regard to his approval of the disposal of the paraphernalia, OPA finds that NE#2 acted consistent with policy.

First, OPA determined that NE#2's role in screening and approving NE#1's decision to destroy the paraphernalia was largely related to ongoing concerns about fentanyl exposure.

Second, from a review of both the BWV and NE#2's interview, it does not appear that NE#2 was aware of NE#1's decision to also dispose of the purse. As he noted, he likely would not have approved of this and OPA does not hold NE#2 responsible NE#1's decision-making in this respect.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**